THE HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION No.12798 of 2007

Dated:15.11.2007.

Between:

Mukku Subbaiah. ..Petitioner

And

The Collector, Krishna (C.S.) Machilipatnam,
Krishna District and three others.

…Respondents.

THE HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION No.12798 of 2007

ORDER:

Heard Sri G.Dharma Rao, the learned Counsel representing the petitioner, the learned Assistant Government Pleader for Civil Supplies representing respondent Nos.1 to 3 and Sri Kowturu Vinaya Kumar, the learned Counsel representing respondent No.4.

2. The Writ Petition is filed for a Writ of *Mandamus* directing respondent Nos.1 to 3 herein to appoint the petitioner as Fair Price Shop Dealer for Shop No.218 at Madhuranagar, Vijayawada, which is vacant, claiming that he is fully qualified to be appointed as Fair Price Shop Dealer, by considering his representation, dated 15.05.2007, and the recommendations of respondent No.3.

3. It is stated by the writ petitioner that he is a Kerosene Retailer outlet dealer and he was appointed as retail dealer on 16.04.1992, by the then Civil Supplies Officer, Circle-II, Vijayawada vide his proceedings R.C.No.1-92, dated 16.04.92 and 17.02.92 as he is qualified. The petitioner passed 10th class examination in the year 1986. He was supplying Kerosene to push cart holders and to bajji vendors without any hindrance and without any blemish whatsoever. But, from August 2005, the respondent Nos.1 to 3 stopped quota to petty vendors. So kerosene quota is not being supplied to the petitioner and to other dealers. Therefore, himself and other dealers like the petitioner lost their livelihood. Further it is stated that while the matter stood thus, the Government of Andhra Pradesh issued instructions, dated 23.03.2006, instructing the Collector (C.S.) and the Chief Rationing Officer, Hyderabad to convert the nominated retail dealers into F.P. Shop dealers in a phased manner as per C.C.S. Reference,

dated 19.03.2005, for those candidates who passed 10th class examination. Therefore, they had made a representation to the authorities on 18.12.2006 and also on 05.01.2007, to convert retail Dealers as fair shop dealers. The Secretary of their Association also filed representation on behalf of the members, on which, the Assistant Supply Officer, Vijayawada, respondent No.3 herein, addressed a letter to the District Collector on 22.11.2005 stating that out of 13 persons, 7 persons are qualified and they are to be appointed as F.P. Shop dealers as they passed 10th class examination and carrying on retail Kerosene dealership without any remarks. The petitioner is one of the 7 candidates and respondent No.2 recommended his case to respondent No.1.

4. Further it is stated that as per the recommendation of respondent No.3, respondent No.2 also recommended the case of the petitioner to respondent No.1 for converting the retail dealership into F.P. Shop. But in the meanwhile, the Sub-Collector, Vijayawada vide his R.C. A7/2591, dated 22.12.2006, issued a notification stating that as per G.O.Ms.No.53, dated 6.10.2003, and G.O.Ms.No.45, dated 10.07.2004, the authorities want to fill up the F.P. shop dealership on permanent basis in Circle-II, Vijayawada. In this Circle-II, there is a proposal to open 21 new shops and directed the candidates who wish to apply for the shops, to apply on or before 08.01.2007 and interviews will be held on 19.1.2007. The petitioner had applied for shop No.268 at Autonagar and also for shop No.218 at Madhuranagar. Apprehending that the respondents may not consider his case, the petitioner filed Writ Petition before this Court.

5. Further it is stated that the petitioner filed W.P.No.906 of 1997, for a Writ of *Mandamus* to direct the respondents to appoint the petitioner as F.P. shop dealer. On

17.1.2007, when the writ petition was posted for admission, the learned Judge observed that the Writ Petition is pre-matured and the petitioner can file another writ petition if he is not selected. Therefore, without prejudice to his rights to file another Writ Petition, the petitioner had withdrawn the said Writ Petition on 17.01.2007.

6. Further it is stated that interviews were over and the list of selected candidates was also published. The petitioner was not selected as per the selection list dated 19.01.2007, even though he is fully qualified for appointment as F.P. Shop dealer. The petitioner was not selected as some irregularities were committed while appointing the candidates. As per the instructions in the notification, if there is a dealer from one family, another family member cannot be selected as F.P shop dealer and the relatives of the Civil Supplies Department cannot be selected as F.P. shop dealers. The petitioner furnished the particulars of shop numbers where two members from one family were selected contrary to the instructions. According to him, at serial No.20 of the selection list, for shop No.218 which was reserved to O.C., one Mr.P.Siva Prasad was selected. Mr.P.Siva Prasad's sister-in-law i.e. his brother's wife by name P.Srilakshmi was already appointed as F.P. shop dealer and allotted Depot No.269 in Circle II of Vijayawada. Therefore, Mr.P.Siva Prasad, respondent No.4 herein, is not eligible for allotment of Depot No.218, which is vacant. Like this, another Depot No.277 at S.No.4 was allotted to Mr.Gugulothu Lalsingh who belongs to S.T. community. The wife of Mr.Gugulothu Lal Singh, by name B.Lalitha Devi is already having a F.P. shop No.240 in Circle–II. Both husband and wife are allotted shops. The Depot No.285 at Serial No.11 was allotted to widow of Ex.Service Man. But, as nobody had taken charge, and is vacant it is allotted to physically handicapped persons. After

coming to know the irregularities committed while selecting the candidates, on 15.05.2007, the petitioner made representation to respondent Nos.1 to 3 to appoint him as Fair Price Shop dealer in any vacant shop. He did not receive any reply so far. In such circumstances, the writ petitioner approached this Court by filing present Writ Petition.

7. In the counter affidavit filed it is stated that during the year 1992, the scheme of supply of P.D.S. Kerosene to the Bujji-Vendors was introduced and petty vendor licenses were issued for distribution of Kerosene to the Bujji-Vendors. During the month of August 2005, the allotment of Kerosene to the Bujji-Vendors was stopped by the Collector (Civil Supplies), Krishna and hence, from August 2005, Kerosene allotment to the petty vendors was stopped as per Government policy. At present Petty Vendor is no way connected with PDS system.

8. Further it is stated that the Revenue Divisional Officer, Vijayawada issued notification for filling up of 21 Fair Price Shops in Circle-II Area, Vijayawada City, vide reference No.A7/2590/2006, dated 22.12.2006, as per rule of reservation. The Commissioner for Civil Supplies, Government of Andhra Pradesh, Hyderabad, vide reference No.N5/11871/2005, dated 09.09.2005, had called for the factual report about petty vendors and accordingly, the Revenue Divisional Officer, Vijayawada has submitted reports received from the Assistant Supply Officers, Circle I & II, Vijayawada, to the Collector (Civil Supplies), Krishna through reference No.A7/2248/05, dated 28.11.2005. In the mean time, the Government have issued instructions through Circular No.N5/2847/2005, dated 31.05.2005 for conversion of nominated kerosene retailers as Fair Price Shop Dealers in a phased manner by notifying the vacancy whenever arises, if the retail kerosene shop dealer is otherwise qualified. The petitioner is only petty

vendor, which system was stopped from August, 2005. He is not a retail kerosene dealer and hence, he cannot claim for Fair Price Shop Dealership as a right.

9. Further it is stated that the petitioner submitted applications for F.P. Shop No.266 and not 268 as stated by the petitioner and also for 218. The petitioner attended the interview on 19.01.2007 for F.P. Shop No.266 and not attended the interview for Shop No.218. Smt. G.Veeranjaneya Devi W/o.Sambasiva Rao was selected for F.P. Shop vacancy No.266 and since a petition was received stating that the relatives are working as kerosene hawkers and enquiry is going on, the selection of the candidate was kept pending and if this selection is cancelled, fresh notification will be issued. The petitioner can file fresh application in the event of fresh notification being issued and his candidature will be considered along with others as per rules. On the previous occasion the petitioner approached this Court along with others in W.P.No.906 of 2007 for conversion of retail Kerosene outlet into F.P. Shop dealer, the petition was dismissed as withdrawn with liberty to litigate afresh as and when the cause of action arises.

10. Further it is stated that after preliminary interview was conducted on 19.01.2007 for F.P. Shop vacancies in Circle-II area, Vijayawada City, selection list was published and the list along with original applications were sent to the Assistant Supply Officer, Circle-II, Vijayawada for verification of antecedents of the candidates. The Assistant Supply Officer reported that some candidates had concealed the fact that their family members are either F.P. Shop dealers or Hawkers and hence, further detailed enquiry is going on. The selected candidates under dispute were not allotted with F.P. shops and if any candidate is found ineligible as per Government norms, the selection will be cancelled and fresh notification will be issued.

11. It is also stated that Sri P.Siva Prasad was selected for F.P. Shop No.218 reserved for O.C. Later on it was noticed that his brother's wife Sri T.Sri Lakshmi is working as F.P. Shop dealer No.269 in Circle-II area. The selected candidate was not given F.P. Shop appointment orders and enquiry is going on. Similarly, the selection of Gugulothu Lal Singh for F.P. Shop No.277 was cancelled as he concealed the fact that his wife is working as F.P. Shop dealer for Shop No.240.

F.P. Shop No.285 reserved for widow of Ex-Service Man was not filled up as no eligible candidate applied and the same was vacant. This shop was not filled up as stated by the petitioner, but was still vacant. The vacant shops will be notified afresh and if the petitioner submits application, his application will be considered along with others as per Rules. There is no provision for straight away allotting vacant F.P. Shops to the petty vendors without notification.

12. It is also stated that Sri P.Siva Prasad, was selected for F.P. Shop No.218, and enquiry is going on. This candidate was not appointed as F.P. Shop dealer. If this candidate is found ineligible as per Government Rules, this selection will be cancelled and fresh notification will be issued. At that time the petitioner can submit his application for that vacancy and his request will be considered along with other candidates as per Government Rules.

13. In the light of the respective stands taken by the parties this Court is of the considered opinion that depending upon the eligibility criteria, the Circulars and the Control Orders governing the field, the petitioner is entitled for consideration as and when vacancies arise. The writ petition is disposed of directing respondent Nos.1 to 3 to consider the case of the

petitioner for appointment as Fair Price Shop dealer in accordance with law, the Circulars, Guidelines and the Control Orders governing the field. In the light of the facts and circumstances, this Court does hope that due consideration will be given to the case of the petitioner accordingly.

With the above directions, the writ petition is disposed of. No order as to costs.

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P.S.NARAYANA, J.

Date:15.11.2007.
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